

Attachment D SAMPLE AGREEMENT

FOR COUNTY USE ONLY



County of San Bernardino

F A S

STANDARD CONTRACT

<input type="checkbox"/>	New	Contractor Code				<input type="checkbox"/>	Dept.	Contract Number			
<input type="checkbox"/>	Change					<input type="checkbox"/>					
<input type="checkbox"/>	Cancel					<input type="checkbox"/>					
County Department						Dept.		Orgn.		Contractor's License No.	
County Department Contract Representative						Telephone		Total Contract Amount			
Contract Type											
<input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:											
If not encumbered or revenue contract type, provide reason: _____											
Commodity Code				Contract Start Date		Contract End Date		Original Amount		Amendment Amount	
Fund	Dept.	Organization		Appr.	Obj/Rev Source		GRC/PROJ/JOB No.		Amount \$		
Fund	Dept.	Organization		Appr.	Obj/Rev Source		GRC/PROJ/JOB No.		Amount		
Fund	Dept.	Organization		Appr.	Obj/Rev Source		GRC/PROJ/JOB No.		Amount		
Project Name					Estimated Payment Total by Fiscal Year						
					FY	Amount	I/D	FY	Amount	I/D	
_____					_____	\$	_____	_____	_____	_____	_____
_____					_____	_____	_____	_____	_____	_____	_____
_____					_____	_____	_____	_____	_____	_____	_____
_____					_____	_____	_____	_____	_____	_____	_____

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and
Name _____

_____ hereinafter called Contractor
Address _____

Telephone _____ Federal ID No. or Social Security No. _____

WHEREAS, the County desires to contract with interested, qualified and licensed tree removal providers for the removal of dead, dying or diseased trees within its mountains as a result of the bark beetle;

WHEREAS, Contractor is qualified, licensed and maintains the appropriate level of insurance to provide the tree removal services for the County; and,

IT IS HEREBY AGREED AS FOLLOWS:

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A. SCOPE OF WORK

1. After a competitive bidding process, the County selects Contractor, whose name appears on the "master list of qualified tree removal contractors" as the lowest bid for tree removal services on the property described in Exhibit 1, "Scope of Work and Bid," attached hereto and incorporated by reference. Contractor shall perform the tree removal services described in Exhibit 1 and must commence work within 14 days of this agreement and complete the described work within 30 days of execution of this agreement.
2. Contractor shall not perform any work not included in Exhibit 1, "Scope of Work and Bid" unless specifically authorized by County. The County's representative who executed this agreement is authorized to negotiate extra work with the Contractor, provided such extra work does not exceed the higher of 10% of the amount of this agreement or the additional cost of tree felling for two trees.
3. In performing the tree removal services there shall be no smoking by the Contractor or its officers, agents, employees, etc. on the property where the trees are being felled and/or removed.
4. Contractor and its officers, agents and employees shall comply with the California Public Resources Code, including, but not limited to, sections 4427, 4431, 4442, and 4443. Contractor certifies that it is in compliance with the requirements of the Public Resources Code, including the safety requirements concerning spark arresters and firefighting equipment.
5. Contractor ensures that prior to entering the property where tree removal services will be performed, Contractor will have the permission of the property owner to enter the property and cut down and/or remove the designated trees and debris. In no event shall Contractor, nor its officers, agents and employees, nor Contractor's equipment, vehicles, trees, etc., enter or cross onto the neighboring parcels/properties without the prior written consent of the owners of such parcels.
6. All required permits/applications will be obtained by Contractor for each designated property awarded unless authorized by the County, in writing, to do otherwise.
7. Photographic documentation is required by Contractor to demonstrate conditions of designated property before and after tree removal. Each photographic print supplied by Contractor shall include the time and date the photo was taken and the property address that it represents. Contractor will furnish and maintain their own camera, photographic equipment, film, photo CDs, and envelopes in which to submit documentation photos. All photographs become the property of San Bernardino County once submitted. Photographic documentation must be submitted with a completed invoice submitted pursuant to Paragraph C, 1, of this agreement.

B. TERM

Unless earlier terminated, this contract shall remain in effect from the day it is approved by both parties until the work described in Paragraph A is completed.

C. FISCAL PROVISIONS

1. Contractor shall provide County an itemized invoice, in arrears, for services performed under this Agreement within thirty (30) days of completion of services. The invoice shall in no event exceed the total contract amount identified in Exhibit 1. All travel costs incurred by Contractor as a result of this agreement are the responsibility of the Contractor.
2. The invoice format shall be subject to approval by the County. At a minimum, the invoice shall clearly reflect the service date, services performed, property address, invoice number, statement period, and an original signature. In

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addition, Contractor shall attach to the invoice at least one (1) before and (1) after photograph of the subject property that represents all of the work performed.

3. Contractor shall submit invoices and photographs to the County, attention Sunny Booze-Lyndes, P.O. Box 130 (HT) Lake Arrowhead, California 92352.
4. Payments will be made upon submission of properly detailed invoices and photographs approved by the appropriate department or individual of the County. In no event shall the County be required to make payment on an invoice that is received by County more than 30 days of completion of services.
5. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services.
6. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
7. County is not liable for the payment of any taxes, other than applicable sales or use tax, resulting from this Contract however designated, levied or imposed, unless County would otherwise be liable for the payment of such taxes in the course of its normal business operations.

D. GENERAL TERMS AND CONDITIONS

1. Representation of the County

In the performance of this Agreement, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

2. Contractor Primary Contact

The Contractor will designate an individual to serve as the primary point of contact for the Agreement. Contractor or designee must respond to County inquiries within four (4) hours.

3. Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

4. Subcontracting

Contractor agrees not to enter into any subcontracting agreements for work contemplated under the Agreement without first obtaining written approval from the County. Any subcontracting shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

5. Agreement Assignability

Without the prior written consent of the County, the Agreement is not assignable by Contractor either in whole or in part.

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6. Agreement Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the required persons.

7. Termination for Convenience

The County for its convenience may suspend or terminate this Agreement immediately upon providing Contractor written or verbal notice. If such termination is effected, County shall provide for payment to the Contractor for services rendered and expenses incurred, prior to the effective date of termination. Upon receipt of termination or suspension notice, Contractor shall promptly discontinue services unless the notice directs otherwise. Failure by Contractor to cease work upon receipt of a notice of termination or suspension will not give rise to a claim for extra costs. The Fire Chief, or his designee, is authorized to exercise the County's right to suspend, restart, or terminate this Agreement, or any work being carried out pursuant to this Agreement.

8. Attorney Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under Section E INDEMNIFICATION.

9. Venue

The venue of any action or claim brought by any party to this Agreement will be the Central District Court of San Bernardino County. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to San Bernardino County.

10. Jury Trial Waiver

Contractor and County hereby waive their respective rights to trial, by jury for any cause of action, claim, counterclaim, or cross-complaint in any action, proceeding, and/or hearing brought by either Contractor against County or County against Contractor on any matter arising out of, or in any way connected with this Agreement, the relationship of Contractor and County, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

11. Labor Laws

Contractor shall strictly adhere to the applicable provisions of the Labor Code regarding the employment of apprentices; minimum wages; travel and subsistence pay; retention and inspection of payroll records; workers' compensation; payment of wages. The Contractor shall forfeit to the County the penalties prescribed in the Labor Code for violations.

12. Notification Regarding Performance

In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this Agreement, the Contractor shall notify the County within one- (1) working day, in writing and by telephone.

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13. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

14. Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement.

The County, by written notice, may immediately terminate any Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an Agreement has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

15. Employment of Former County Officials

CONTRACTOR agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent CONTRACTOR. The information provided includes a list of former county administrative officials who terminated county employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of CONTRACTOR. For purposes of this provision, "county administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, county department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

16. Inaccuracies or Misrepresentations

If in the administration of this Agreement, the COUNTY determines that CONTRACTOR has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, the Agreement may be immediately terminated.

In the event of a termination under this provision, the COUNTY is entitled to pursue any available legal remedies.

17. Recycled Paper Products

The County has adopted a recycled product purchasing standards policy (11-10), which requires Contractors to use recycled paper for proposals and for any printed or photocopied material created as a result of a contract with the County. The policy also requires Contractors to use both sides of paper sheets for reports submitted to the County whenever practicable

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18. Ownership of Documents

All documents, data, products, graphics, computer programs, photographs and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered property of the COUNTY upon payment for services. All such items shall be delivered to COUNTY at the completion of work under this Agreement, or, if the COUNTY exercises its right to terminate the Agreement early, at the time the Agreement is terminated by the COUNTY. Unless otherwise directed by COUNTY, CONTRACTOR may retain copies of such items.

19. Release of Information

No news releases, advertisements, public announcements or photographs arising out of this Agreement or CONTRACTOR's relationship with COUNTY may be made or used without prior written approval of the COUNTY.

20. Disputes.

Unless otherwise indicated in writing, all disputes which may arise under this Agreement and not disposed of by mutual consent, shall be decided by the Fire Chief, or his designee.

21. Licenses, Permits, and Compliance With Laws

CONTRACTOR is responsible for acquiring and maintaining throughout the term of this Agreement any and all permits, licenses, approvals from local, state, and/or federal governmental or regulatory entities that may be necessary to perform the services described in this Agreement. In addition, CONTRACTOR certifies that it will comply with all applicable City and/or County ordinances, State and Federal laws, rules and regulations in carrying out the terms of this Agreement. CONTRACTOR will notify COUNTY immediately of loss or suspension of any such licenses and permits. Failure to comply with this paragraph will result in immediate termination of this Agreement.

E. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. Indemnification

The CONTRACTOR agrees to indemnify, defend and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising in any manner from CONTRACTOR's acts, errors or omissions and for any costs or expenses incurred by the COUNTY on account of any claim therefore, except where such indemnification is prohibited by law.

2. Insurance Coverage

Without in any way affecting the indemnity herein provided and in addition thereto, the CONTRACTOR shall secure and maintain throughout the Agreement the following types of insurance with limits as shown:

a) Workers' Compensation - A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the CONTRACTOR and all risks to such persons under this Agreement.

If Contractor has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Risk Manager.

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With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

b) Comprehensive General and Automobile Liability Insurance - This coverage to include contractual coverage and automobile liability coverage for owned, hired and non-owned vehicles. The policy shall have combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000).

3. Additional Named Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder.

4. Waiver of Subrogation Rights

The CONTRACTOR shall require the carriers of the above-required coverage's to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, Contractors, and subContractor.

5. Policies Primary and Non-Contributory

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

6. Proof of Coverage

The CONTRACTOR shall immediately furnish certificates of insurance to the COUNTY Department administering the Agreement evidencing the insurance coverage, including the endorsements above required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department. CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within sixty-(60) days of the commencement of this Agreement, the CONTRACTOR shall furnish certified copies of the policies and all endorsements.

7. Insurance Review

The above insurance requirements are subject to periodic review by the COUNTY. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore, unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager is authorized but not required, to change the above insurance requirements, to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the County's risk.

Any such reduction or waiver for the entire term of the Agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty- (30) days of receipt.

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F. CORRECTION OF PERFORMANCE DEFICIENCIES

1. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
2. In the event of a non-cured breach, County may, at its sole discretion and in addition to immediate termination and any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at sole discretion of County; and/or
 - b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - c. Withhold funds pending duration of the breach; and/or
 - d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - e. Terminate this Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

G. RIGHT TO MONITOR AND AUDIT

1. Right to Monitor

The COUNTY and/or State of California, and/or the United States government, shall have the absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of CONTRACTOR in the delivery of services provided under this Agreement. CONTRACTOR shall give full cooperation, in any auditing or monitoring conducted. CONTRACTOR shall cooperate with the COUNTY in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by the COUNTY.

2. Availability of Records

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by COUNTY and/or State of California and/or United States government representatives for a period of five years after final payment under the Agreement or until all pending COUNTY, State and Federal audits are completed, whichever is later.

H. EQUAL EMPLOYMENT OPPORTUNITY

CONTRACTOR agrees to comply with the provisions of the Equal Employment Opportunity Program of the County of San Bernardino and rules and regulations adopted pursuant thereto: Executive Order 11246, as amended by Executive Order 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing

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Act, and other applicable Federal, State, and County laws, regulations and policies, including laws and regulations hereafter enacted.

CONTRACTOR shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, sex, sexual orientation, marital status, age, political affiliation or disability.

I. CONCLUSION

This Agreement, including Exhibit 1, "Scope of Work and Bid," constitutes a single, integrated contract, expressing the entire agreement and understanding of the parties concerning the subject matter of this agreement, and this agreement supersedes and replaces all prior understandings, negotiations, proposed agreements and agreements, whether oral or written, express or implied.

The signatures of the Parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.

IN WITNESS WHEREOF,

COUNTY OF SAN BERNARDINO

► _____
Peter Hills, Fire Chief

Dated: _____

(Print or type name of corporation, company, Contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

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**EXHIBIT 1
SCOPE OF WORK AND BID**

Contractor agrees to provide the following services:

Contractor shall cut down _____ tree(s) located at _____ and that have been designated by a registered professional forester for the County as dead, dying or diseased trees as a result of the bark beetle.

The tree(s) to be cut down by Contractor will be identified with a _____ mark that has been designated by the County on the trunk of the tree. Tree felling is to be done in a manner appropriate for the designated property. All factors pertinent to that property must be considered to determine the best method to fall tree(s).

[INSERT IF APPROPRIATE] Contractor also agrees to properly remove both the tree and its debris off the property identified above. Contractor is required to utilize Burnt Flats Wood Waste Processing Facility (Burner)–for disposal of materials removed unless authorized or approved by designee of the Fire Marshal to utilize another method of disposal.

Contractor agrees to perform the work described above for _____ dollars (\$_____).

Signature: _____

Date: _____

Print Name: _____

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